

Department of State Revenue

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Issue

Gross Income Tax – Air Transportation.

Authority: IC 2.1-2-2, 49 U.S.C. § 1513(a), **Aloha Airlines, Inc.** U.S.S.Ct. (1983)

U.S.C. TITLE 49 TRANSPORTATION- FEDERAL AVIATION ACT.

Sec. 1513. State taxation of air commerce. Prohibition; exemption.

No state (or political subdivision thereof)... shall levy or collect a tax... directly or indirectly... on the sale of air transportation or on the gross receipts derived therefrom...
Nothing in this section shall prohibit a State... from the levy or collection of... property taxes, net income taxes, franchise taxes, and sales or use taxes... [1973]

Facts

The taxpayer is an international air carrier engaged in the business of providing air transportation of persons and property by utilizing a fleet of owned and leased airplanes. The taxpayer claims that the income from such activity is exempt from Gross Income Tax pursuant to Federal statute.

Question

Are the taxpayer's gross receipts derived from the sale of air transportation subject to Gross Income Tax?

Response

A. Gross receipts derived from the sale of air transportation are exempt from Gross Income Tax.

Gross Income Tax Prohibited Gross receipts directly or indirectly derived from providing interstate or intrastate air transportation of persons or property are not subject to Gross Income Tax. Such taxes are prohibited by the federal preemption statute, 49 U.S.C. § 1513. The 1970 U.S. Congress imposed certain federal taxes on air transportation. After the US Supreme Court in *Evansville-Vanderburgh Airport Authority v. Delta Airlines* (1972) held that additional state taxes were not prohibited, Congress, in 1973, enacted 49 U.S.C. § 1513 to restrict the imposition of certain state taxes.

Air transportation begins at the point at which the air carrier accepts full responsibility for the customer's property or person and ends at the destination agreed upon including any land transportation required under the air waybill or passenger ticket.

B. Federal Preemption Statute Limitations.

1. The exemption from Gross Income Tax is limited to the transportation income of those air carriers which directly own or lease tangible personal property used for transportation by air of persons or property. The exemption does not extend to the income of persons who may,

as a necessary cost of performing transportation services, hire an otherwise exempt air carrier. A tax on such income is not a tax levied "directly or indirectly" on the "sale of air transportation". See 49 U.S.C. § 1513(a).

2. The gross receipts of an air carrier which are not attributable to the sale of air transportation of persons or property are not exempt from Gross Income Tax.
3. Imposition of a tax on net income, sales and use taxes imposed on sales and purchases of tangible personal property, and withholding of taxes from employees and others are not prohibited.